IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.129 OF 2006

WITH

CIVIL APPLICATION NO.158 OF 2006

Shri Mukesh Ramkumar Singh & Ors. ...Appellants

Versus

Maharashtra Area Development

Corporation & Ors. ...Respondents

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Mr.R.S.Apte i/b Mr.N.R.Bubna for Appellants.

Mr.A.R.Patil, A.G.P. for Respondent No.1.

Mr.M.S.Lagu for Respondents 11 to 16.

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CORAM: A.M.KHANWILKAR, J.

APRIL 17, 2006.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mr.Patil, A.G.P. waives notice on behalf of Respondent No.1. Mr.Lagu waives notice for Respondents 11 to 16. No other Respondent has

appeared before the Court inspite of the notice.

4. This Appeal takes exception to the order passed by the Bombay City Civil Court at Bombay dated January 25, 2006 in Notice of Motion No.316 of 2006 in S.C.Suit No.408 of 2006. By the said order, the Court refused to grant ad-interim relief as prayed for by the Plaintiffs/Appellants herein on the ground that no legal provision was brought to the notice of the Court as to why the manner in which allotment of tenement was to be made by the Respondent No.1 Authority was illegal or inappropriate. The grievance of the Appellants/Plaintiffs, however, is that there is no justification for allotting the tenements by draw of lots. There is no dispute that the Plaintiffs and other occupants were occupying respective tenements situated at particular position on the suit site. The Plaintiffs as also other occupants therefore will have to be allotted alternative tenements at the same position. Indeed, on account of reconstruction, the size of the original tenaments have undergone change. Area of some tenements have increased wheres area of some

tenements have been reduced. Nevertheless, contends Counsel for the Appellants, there is no reason to disturb the location of the tenements which were originally occupied by the Appellants. Instead, the Authority can ask the Appellants to compensate for the larger area made available to them by way of alternative tenements. At the same time, the Authority should compensate the occupants who will be provided alternative tenements of reduced area. By no standards, there is justification to allot tenements by adopting draw of lots which will completely change the location of the respective occupants and result in avoidable controversy between the occupants inter se. The cause of the Appellants is supported by Respondents 11 to 16. As majority of the occupants have agreed to accept the above stand taken by the Appellants, in my opinion, the Authority ought to consider the request of the Appellants to allot tenements at the same position and to compensate the concerned occupant for providing lesser/reduced area and to charge prevailing market rate from the occupants who will be provided additional or surplus area. All these aspects can be considered at the time of

hearing of the Notice of Motion. In fact, if the stand of the Appellants were to be accepted, nothing would survive for consideration in the Suit.

5. In the circumstances, the order refusing to grant ad-interim order which is impugned in this Appeal, is set-aside and instead, this Appeal is allowed by directing the parties to maintain status-quo with regard to the suit property till the disposal of the Notice of Motion. The Trial Court is directed to decide the Notice of Motion expeditiously, preferably by end of June 2006. All questions are left open to be considered on its own merits in accordance with law.

6. In case, the Trial Court were to pass adverse order against the Appellants, the Trial Court may consider the request of the Appellants to continue the interim arrangement for a period of two weeks to enable the Appellants to take up the matter in Appeal, if so advised.

A.M.KHANWILKAR, J.